

Office of the Legislative Auditor



State of Montana

Report to the Legislature

April 1994

Performance Audit Report

Health Facility Licensure Program

Department of Health and Environmental Sciences

This report contains recommendations for improving the review structure for licensing health care facilities. The recommendations include:

- ▶ Designating a lead agency.
- ▶ Clarifying regulatory standards.
- ▶ Strengthening program administration.

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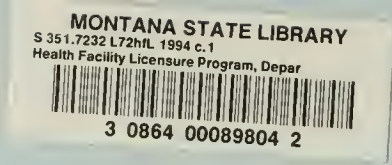
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April 1994

The Legislative Audit Committee
of the Montana State Legislature

This is our performance audit of the Health Facility Licensure Program, administered by the Department of Health and Environmental Sciences.

This report contains recommendations for improving the review structure for licensing health care facilities. Responses from the Governor's Office and the department are contained at the end of the report.

We wish to express our appreciation to the Governor's Office and the staff of the department for their cooperation and assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seocat".

Scott A. Seocat
Legislative Auditor

Office of the Legislative Auditor

Performance Audit

Health Facility Licensure Program

Department of Health and Environmental Sciences

Members of the audit staff involved in this audit were Angie Grove, Pam Boggs, and Jim Nelson. Additional information on the audit can be obtained by contacting the Office of the Legislative Auditor at (406) 444-3122.

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Appointed and Administrative Officials

**Department of Health
and Environmental
Sciences**

Bob Robinson, Director

Denzel Davis, Administrator, Health Facilities Division

Roy Kemp, Chief, Licensure Bureau

Report Summary

Introduction

A performance audit of the health care facility licensure function at the Department of Health and Environmental Sciences (DHES) was requested by the Legislative Audit Committee. The initial health care facility licensing system was created by the legislature in 1947 to ensure a minimum quality of care at hospital facilities, as well as to ensure the safety of patients. Specific health care facility licensing duties have been assigned to the Licensure Bureau within the Health Facilities Division. This bureau is responsible for conducting license inspections and complaint investigations.

Compliance Issues

We tested compliance with the various licensure and regulatory requirements in state laws and rules. Our testing included file reviews, staff interviews, interviews with various facility personnel and review of information from other Montana agencies and health care licensing agencies in other states. During this testing, we noted several concerns relating to program compliance:

- Some health care facilities are operating without a license.
- Facility inspections are not always conducted.
- Certain facilities not meeting standards are licensed.
- Some laws are inconsistently applied.

What has Caused Program Noncompliance?

Program noncompliance issues are in part due to a disjointed review structure for health care facility regulation and weaknesses in administering the Licensure program. When the licensing statutes were instituted, there was limited government oversight and a limited number of health care facilities operating in Montana. Since that time the health care industry and its related regulation have changed and expanded significantly. Health care services are no longer limited to hospitals. There are at least 22 different types of health care facilities operating in this state. With this growth in services there has been an accompanying growth in health care regulation.

Report Summary

Initially the department was the agency with primary statutory oversight and enforcement authority for health care facility regulation. The oversight structure now includes several different groups and agencies. It appears the state's licensure program has not kept pace with these changes, which has contributed to the bureau's inability to fully and consistently carry out its duties and comply with state laws. Currently the Licensure Bureau relies on the regulation conducted by other state agencies. However, there has been no formal assurance that this regulation meets the needs of the Licensure Bureau.

Should the Current Review Structure Continue As Is?

The state should take steps to improve the health care facility licensure process by ensuring coordination of licensure functions between various involved agencies. The process should ensure facility compliance with state and federal standards to meet the program's mission of protecting the people of Montana. Due to extensive changes in how health care is provided and due to several state agencies sharing overall regulation, we believe the Governor should revisit the concept outlined in the one-step licensing statutes. The Governor could do this by designating a lead agency for health care facility regulation. Specific responsibilities need to be assigned to ensure all oversight and regulation of facilities is coordinated. Specific steps should be taken to address noted areas of noncompliance with licensing laws. Coordination should provide for minimal effort by all agencies by relying on the inspections and surveys of other regulators. The designated lead agency can take steps to identify areas which may require additional rule development.

Licensure Bureau Administration

We identified several areas where additional steps could be taken to strengthen the administration of the Licensure Bureau. The bureau has not yet developed a system to manage and monitor its activities, project resource needs, establish procedures, or evaluate its performance. We also found there are limited guidelines available for licensure staff. All bureau goals have not been addressed or fully developed and; therefore, staff priorities are continually changing.

Because the Licensure Bureau is an integral component of Montana's health care regulation, we believe improvements need to be made to assure program goals are achieved. By strengthening some of the management controls over this program, the bureau could improve their efficiency and impact the need for additional resources. Without clear priorities and established guidelines, bureau activities will be less effective. To strengthen program administration, the department should:

- Establish a system to accurately track and update program and staffing information;
- Develop formal policies and procedures for program staff; and,
- Develop a plan which addresses bureau priorities and helps assure compliance with all licensure requirements.

Licensing Fees

The legislature established a licensing fee system in 1947 when it established a health care facility licensure program. The original fee was established at \$10 per facility and increased once in 1967 to \$20 per facility. In 1975 the law was amended to require any facility planning to operate with more than 20 patient or resident beds pay an extra \$1 for each additional bed. Department staff indicated limited funding has impacted the ability of the program to enforce its statutory requirements. Limited funding can restrict the staff and resources to actively regulate health care facilities. Based on our review, we believe there are three funding options that can be considered for this program. These options include establishing:

- Fees commensurate with program costs;
- Minimal licensure fees to cover processing costs;
- Fees related to program costs.

The current health care facility licensing fee structure has not been altered since 1975 and the base fee of \$20 has not been changed since 1967. The value of \$1.00 in 1967 is equal to a little less than 24 cents in 1992. Just to maintain the "purchasing power" of the license fee, the fee should be approximately \$84.

Report Summary

We believe the department should seek legislation to make all fees consistent and commensurate with program costs, or set all health care facility licensing fees to cover processing costs, or establish fees at a certain percentage of program costs.

Chapter I

Introduction

Introduction

A performance audit of the health care facility licensure function at the Department of Health and Environmental Sciences (DHES) was requested by the Legislative Audit Committee. Preliminary audit work concentrated on the department's Health Facilities Division. This division includes the Certification Bureau and the Licensure Bureau. During our planning work we noted the Certification Bureau has comprehensive policies and procedures, management information is compiled and used, staff are adequately supervised, and program effectiveness is regularly monitored by federal review staff. We were unable to identify these controls in the Licensure Bureau. We therefore concentrated our review in that area. This chapter outlines prescribed audit scope and objectives for audit work related to the health facilities licensing program of the Licensure Bureau.

Audit Objectives

During our preliminary work we addressed the following questions:

1. Are there facets of health care licensure that could be coordinated or consolidated between government agencies?
2. Is the department in compliance with current licensing requirements?

Program effectiveness and efficiency were examined during our preliminary planning. After initial audit work was completed, we noted significant areas of noncompliance with state laws and rules. We also identified areas where several programs/agencies perform similar functions. Based on this work, it did not appear the health facilities licensing program was effective in meeting its intended purpose. We therefore, expanded our audit work to address one additional question:

3. Does the current state health care facility licensure program meet legislative intent?

Chapter I

Introduction

Audit Scope and Methodology

This audit was conducted in accordance with government auditing standards for performance audits. We compiled general background information on current licensure of health care facilities and identified relevant laws and rules. Interviews were conducted with staff to gain an understanding of the operations of the Licensure Bureau. We also contacted other state and local government agencies that conduct some form of regulation of health care facilities.

We examined DHES compliance with those statutes and rules which directly relate to actual licensing procedures. Compliance testing concentrated on bureau procedures to ensure compliance at the facility level. We examined department procedures for identifying facilities that are operating without a required license, for assessing penalties for facility noncompliance, and for ensuring timely licensing inspections. We reviewed phone books and other sources of health care facility information to identify health care facilities which were potentially operating without a license.

We did not test for compliance at the facility level. We examined the procedures used by department staff to ensure compliance during their on-site inspections of facilities.

We conducted phone interviews with other states to determine how their licensing processes compared with Montana's current operations. We also compared Montana statutory requirements to requirements in other comparable states.

We contacted a sample of various health care facilities to determine what types of licenses they are required to obtain. This sample included nursing homes, rural health centers, mammography labs, etc. We documented the different inspections conducted on the facilities and operations and the entities involved in the inspections. We compared the licensing requirements and duties of other state agencies to DHES licensing requirements. We reviewed the various licensing standards, survey forms, and licensing procedures for regulating health facilities used by the Licensure Bureau and other state agencies.

We contacted a sample of county health departments and local building and fire code inspectors. We compared their standards and survey procedures to those methods followed by Licensure Bureau staff.

We identified areas where duplication may occur between various agencies. We identified other regulation that may be relied upon to provide oversight for health care facilities. The one-step licensing criteria outlined in section 50-8-102, MCA, was examined and compared to current operations. This law specifically states a one-step licensing office shall facilitate intra-departmental certifications for licensure. One-step licensing would include coordination of all governmental licensing functions, state and local, required for licensure. Coordination may also include sharing the responsibility for inspections, reviews, and application processing by other agencies.

Chapter II

Background

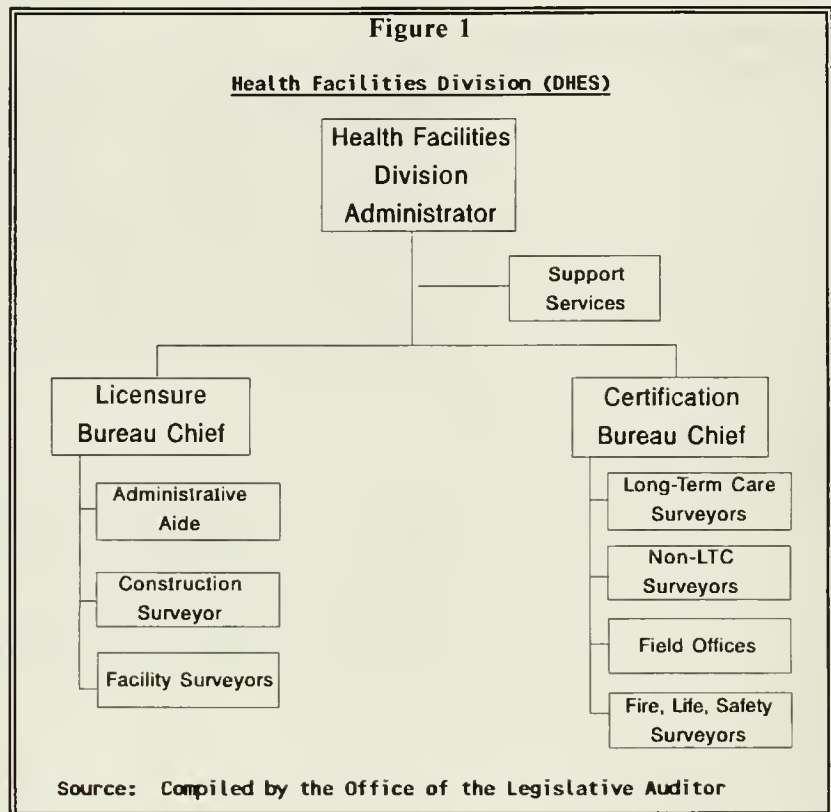
Background

The Department of Health and Environmental Sciences (DHES) was created to protect and promote the health of the people of Montana. The department is responsible for implementing public health programs and enforcing public health regulations. One system of health care regulation used by the department is licensure of health care facilities. The initial licensing system was created by the legislature in 1947 to ensure a minimum quality of care at hospital facilities, as well as to ensure the safety of patients.

Health Facilities Division

DHES health regulation duties have been divided among four divisions. These divisions include Centralized Services, Environmental Sciences, Health Services, and Health Facilities. The Health Facilities Division is responsible for general oversight of health care facilities. The following organizational chart outlines the Health Facilities Division structure.

Chapter II Background



Historically the Licensure and Certification Bureaus operated as one unit and regulatory duties were performed concurrently by all staff. The department separated the various duties into two separate bureaus in May 1992. This separation established a Licensure Bureau to ensure the state licensing program was not being funded by the federal certification program.

The Certification Bureau assures federal Medicaid and Medicare requirements are followed at applicable health care facilities. Certification reviews concentrate on compliance with federal regulations addressing patient care and safety. (Certification duties are further discussed in Chapter IV.)

Licensure Bureau Responsibilities

There are currently five full-time employees in the Licensure Bureau. Staff include a bureau chief, a building construction surveyor, two health care facility surveyors, and an administrative aide. The administrative aide tracks facility license applications and license renewals. Health facility surveyors conduct license inspections and complaint investigations at the facilities. The building construction surveyor reviews facility construction or renovation plans and conducts building inspections. In addition to managerial duties, the bureau chief is responsible for developing administrative rules and bureau reports. Goals for the bureau include:

1. Update and clarify state licensure standards for health care facilities and services.
2. Conduct compliance surveys of health care facilities and services to assure the safety of residents/patients.
3. Assist new or potential providers to ensure Montana standards will be met.
4. Review and approve renovation or new construction plans of health care facilities.
5. Investigate complaints regarding licensed health care facilities.
6. Provide a variety of consultative and technical assistance to health care providers, potential providers, consumers, and the general public.

Who is Regulated by the State Licensure Program?

A health care facility is generally defined in section 50-5-101, MCA, as:

". . .any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical

Chapter II Background

facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers."

Currently there are at least 22 different types of health care facilities/providers offering services in Montana. Over 300 health care facilities are licensed including hospitals, home health agencies, and nursing homes. The following list outlines the various facilities licensed.

Table 1

Type & Number of Licensed Facilities*
As of August 1, 1993

<u>Type</u>	<u>Licensed</u>
Adult Day Care Center	25
Ambulatory Surgical Facility	7
Chemical Dependency Facility	6
Home Health Agency	46
Home Infusion Services	1
Hospice	19
Hospital	55
Infirmary	2
Kidney Treatment Center	7
Medical Assistance Facility	5
Mental Health Center	8
Nursing Home	103
Outpatient Facility	8
Outpatient Radiation Facility	1
Personal Care Homes	28
Rehabilitation Facility	1
Residential Treatment Facility	3
Specialty Mental Health Facility	1
Total	<u>326</u>

* Four facility types do not have any facilities currently licensed.

Source: Licensure Bureau, Department of Health and Environmental Sciences

Licensing requirements apply to health care facilities as defined in state law. There are no facility licensing requirements for offices of private physicians or dentists. The only other health

care facilities specifically excluded from the state licensure requirements are federally-operated facilities.

The Licensure Process

Section 50-5-201, MCA, states a person may not operate a health care facility unless that facility is licensed by the department. To obtain a state license, a formal application and a \$20 license fee must be sent to the Licensure Bureau 30 days prior to opening the facility. Facilities planning to operate with more than twenty patient or resident beds must pay an extra \$1 for each additional bed.

After an application is received, the Licensure Bureau is required to conduct a compliance inspection of the facility within 45 days. In order for Licensure staff to observe operations and ensure compliance with licensing statutes, rules and standards, the facility should be operating and serving patients or residents. Although standards vary for different types of facilities, there are some general requirements that must be observed by all health care facilities. These standards include the following:

- Construction and remodeling requirements.
- Food service requirements.
- Blood bank and transfusion services.
- Communicable disease control.
- Medical record maintenance.
- Physical plant and equipment maintenance.
- Environmental control requirements.
- Disaster plan procedures.
- Laundry and bedding controls.

Licensure inspections are to be unannounced in order to observe actual operations. All records and building areas must be open to state licensure inspection at all reasonable times.

Current statutes say "licenses may be issued for a period of one to three years in duration." At the end of each license period, facilities are required to renew their licenses and pay required fees. Licensure Bureau staff are mandated to conduct renewal inspections of all facilities to ensure on-going compliance with state health care standards. Facilities are required to correct any

Chapter II Background

areas of noncompliance identified during these inspections. The bureau has the option of issuing a provisional license for a period less than one year when minimum standards are not completely followed. When health care standards are not met, bureau staff request a plan of correction be developed by the facility. Documentation of operational changes or additional on-site inspections may be required for license approval.

A license may be denied, suspended, or revoked if a facility does not meet the specified standards. For example, section 50-5-207, MCA, states a license may be revoked if there is insufficient or unqualified facility staff. There are also restrictions regarding the transfer of licenses. A facility license may not be sold, assigned, or transferred. Upon closing or transferring ownership of a facility, the license must be returned to the department.

Any licensee considering renovation or construction of a health care facility is required to submit plans for preliminary inspection and approval. All new and remodeled health care facilities must be examined to determine compliance with building and safety codes.

Program Funding

Licensing operations are funded solely through the General Fund. Funding for the Licensure Bureau for fiscal year 1993-94 is \$353,035. The Licensure Bureau collected approximately \$15,000 in licensing fees for fiscal year 1992-93. The fees collected are deposited directly into the General Fund.

Chapter III

Compliance Issues

Introduction

During our audit of the Licensure Bureau in the Health Facilities Division, we tested compliance with the various licensure and regulation requirements in state laws and rules. Our testing included file reviews, staff interviews, interviews with various facility personnel and review of information from other Montana agencies and health care licensing agencies in other states. During this testing, we noted several concerns relating to program compliance:

- Some health care facilities are operating without a license.
- Facility inspections are not always conducted.
- Certain facilities not meeting standards are licensed.
- Some laws are inconsistently applied.

These concerns are due to the department not keeping pace with health care regulation and the changes occurring in the current review structure. The following sections outline our findings in each of the compliance areas. We further discuss the cause of these problems in the next chapter.

All Health Care Facilities are not being Licensed

Section 50-5-201, MCA, states "a person may not operate a health care facility unless the facility is licensed by the department." Through staff interviews and phone calls to various health care facilities, we determined there is significant noncompliance with this statute. We identified over 30 health care facilities that currently operate without a state license. Department staff indicated they are aware of at least 50 facilities operating without a license. These facilities include nursing homes, abortion clinics, community mental health clinics, and physical therapy clinics. These facilities were identified through a review of various phone books, health care association information, and information from other state agencies.

After further review of department files, we identified a nursing home in operation which provides services without a state license. This facility was first reviewed by department staff in 1985. Another staff visit occurred in 1990. These inspections were conducted due to receipt of complaints regarding patient care and building code violations. No action has been taken by

Chapter III Compliance Issues

the department to enforce the licensure requirement for this facility. The bureau's licensing practice has been to provide copies of related laws to those facilities which request information and leave it up to the facility to apply for a license. Bureau staff do not routinely followup on these facilities.

Licensed Health Care Facilities are not Regularly Inspected

Section 50-5-204, MCA, requires initial inspections of health care facilities within 45 days after a licensure application is received. This statute also requires inspections for all facilities that apply for license renewal. During our file review and phone calls to operating health care facilities, we found initial inspections are not generally conducted within any specific time limits or are not conducted at all. For example, an adult day care center in Helena had been licensed for over eight months and no inspection had been conducted. Of 16 new facilities applying for licensure in fiscal year 1992-93, we noted five facilities that did not receive initial inspections in accordance with state law.

We also found inspections are not always conducted for license renewal as required in section 50-5-204, MCA. Current bureau practice is to issue renewals for all applications without any documented inspection. There are currently over 300 licensed facilities, but licensure staff conduct only 45-50 inspections annually.

Health Care Facilities Which do not Meet Standards are being Licensed

In March 1993 the bureau requested a hospital to "voluntarily" relinquish its license due to extensive noncompliance with hospital and health care standards noted during a Medicaid certification review. No inspection was conducted by Licensure Bureau staff, and a license was renewed in April 1993. This is contrary to section 50-5-204, MCA, which requires an inspection of the facility prior to license renewal. No additional file documentation was available to indicate the hospital had corrected the previously noted noncompliance areas. We were unable to document any attempt by the department to ensure the hospital met minimum standards or was in compliance with Minimum Standards For a Hospital (ARM 16.32.320) prior to issuance of a renewal license.

Other examples of licensed facilities not meeting applicable licensing standards were documented during our file review. One example noted a hospice facility which applied for license renewal, but was not able to meet current licensure requirements. Communications from bureau staff stated no licensing survey would be conducted or would be planned due to the limited services provided by that facility. However, the facility was issued a provisional license in the event the facility was "asked to provide or coordinate hospice services."

**Some Licensing Laws are
being Inconsistently
Applied**

Some licensing laws appear to be inconsistently applied. Department files included facilities which are certified to provide health care paid for by Medicaid and Medicare but are not licensed by the department as a health care facility. For example, rural health clinics are certified to provide Medicaid/Medicare services, but no state license is obtained by these facilities.

Another related inconsistency was that some facilities of a certain type are licensed, while other similar facilities are not licensed. For example, there are nine outpatient facilities certified by the department as operating with Medicaid and Medicare certification, but only seven of these facilities have a state license.

**What has Caused Pro-
gram Noncompliance?**

When the licensing statutes were instituted, there was limited government oversight and a limited number of health care facilities operating in Montana. In 1947 when this program was established, the statutes included only hospitals. Since that time the health care industry and its related regulation have changed and expanded significantly. Health care services are no longer limited to hospitals. There are at least 22 different types of health care facilities operating in this state. With this growth in services there has been an accompanying growth in health care regulation.

Initially the department was the agency with primary statutory oversight and enforcement authority for health care facility

Chapter III Compliance Issues

regulation. The oversight structure now includes several different groups and agencies. It appears the state's licensure program has not kept pace with these changes, which has contributed to the bureau's inability to fully and consistently carry out its duties and comply with state laws.

In addition, comparing bureau activities to its own outlined program goals, we found some goals are being met while others are not addressed. The following chart outlines bureau goals and the related bureau success in addressing those goals.

<u>GOALS</u>	<u>HAS BUREAU MET GOAL?</u>
1. Update & Clarify All Standards	No
2. Conduct Surveys of All Facilities	No
3. Assist New or Potential Providers	Partially
4. Review/Approve Construction Plans	Yes
5. Investigate Facility Complaints	Yes
6. Provide Technical Assistance	Partially

Source: Compiled by the Office of the Legislative Auditor from department records

We noted bureau staff do review and approve construction and remodel plans for health care facilities. Other program goals such as updating and clarifying licensure standards and conducting compliance surveys are not being met.

The department has not developed a strong and coordinated enforcement and regulatory function. The bureau has no goal to license all health care facilities to ensure compliance with current statutes. Currently, it does not appear the department has coordinated activities to provide a state oversight program

which ensures the consumers of health care that a facility meets minimum safety standards.

Conclusion

These compliance issues are in part due to a disjointed review structure for health care facility regulation and weaknesses in administering the program. The next two chapters discuss the changes needed for better regulatory coordination and the need for improvements in administration. By taking these steps, a more effective review structure can be developed to ensure noncompliance issues are corrected.

Chapter IV

Current Review Structure

Introduction

Current statutes suggest the primary reason the legislature established a licensing program for health facilities was to promote the safety and welfare of residents or patients. A state license is to be issued when minimum standards of care are met at facilities. However, based on our audit findings, it appears the licensure program is not completely performing as intended. Specifically:

- Some health care facilities are operating without licenses.
- Facility inspections are not always conducted.
- Certain facilities not meeting standards are licensed.
- Some laws are inconsistently applied.

In addition, the licensing program needs to operate in conjunction with a number of other regulatory agencies and groups. This chapter discusses the need to address changes in both the types of health care providers and the statewide health care review structure.

What is the Current Review Structure?

Some of the problems in health care facility regulation can be attributed in part to the growth and changes in health care oversight. Section 50-5-101, MCA, which includes the definition of a health care facility, has been amended during every legislative session since 1967. This law now specifically includes 22 different health care facility types. By adding all these different facility types, the legislature has placed additional responsibility on the department to develop timely and comprehensive rules and procedures to provide for the safety and welfare of patients.

In addition to the growth in health care providers, there have been significant changes in health care regulation. Various agency programs and groups were created to address some of the more specific aspects of health facility regulation.

We contacted a sample of health care facilities to determine what types of licenses they are required to obtain. This sample included nursing homes, rural health centers, mammography labs, etc. We documented the different inspections conducted of

Chapter IV Current Review Structure

the facilities and operations and the entities involved in their regulation. The following chart outlines various agencies which have varying degrees of regulatory oversight over health facilities and services. We included some facilities that are not currently defined in the licensing statutes as health care facilities but the level of care being provided could raise potential health care concerns at these facilities.

Table 3

Various Health Care Facility Types and Regulatory Agencies

	DHES-Licensing	DHES-Certification	Building Codes	Fire Marshall	County Health	DHES-Food/Consumer	Gov-Board of Visitors	DHES-Cert. of Need	DFS-Aging Services	SRS-Medicaid	DFS-Protective Serv.	DCHS-Chemical Dep.	DCHS-Mental Health
Hospitals	X	X	X	X	X								
Nursing Homes	X	X	X	X		X	X	X					
Home Health	X	X	X	X			X	X	X				
Physician Office			X	X									
Laboratories		X	X	X									
Personal Care	X		X	X	X		X	X					
Adult Foster				X				X		X			
Adult Day Care	X		X	X				X					
Mental Health	X		X	X		X	X						X
Retire Homes			X	X	X		X						X
Chem. Depend	X		X	X			X				X		
Resident. Treat.	X		X	X			X						
Abortion Clinic		X	X	X									
Mammography		X	X	X									
Physical Ther.	X	X	X	X									
Rural Health		X	X	X									

Source: Compiled by the Office of the Legislative Auditor

What Other Entities are Involved in Reviewing Health Care Facilities?

As noted in table 3, the Licensure Bureau is no longer solely responsible for ensuring the safety and welfare of patients and residents in all health care facilities. Other entities involved include regulatory agencies, advocacy groups, and accreditation organizations.

Other State Agencies

Certificate of Need staff at the Department of Health and Environmental Sciences initially examine construction or remodeling plans for some health facility types. This review concentrates on cost containment and accessibility of health care services.

Facilities that are federally certified to provide Medicare or Medicaid services are reviewed periodically by Certification Bureau staff. Approximately 200 of the licensed facilities in Montana are reviewed by Certification staff annually. These certification reviews address federal regulations relating to health, medication, safety and staffing requirements.

In addition, the Chemical Dependency Division at the Department of Corrections and Human Services conducts annual reviews of chemical dependency treatment centers. The Mental Health Division, also at the Department of Corrections and Human Services, examines procedures at community mental health centers.

The state's Fire Marshall staff at the Department of Justice are required to conduct annual fire safety inspections of commercial buildings.

Staff in the Building Codes Bureau at the Department of Commerce examine all commercial building plans, which includes hospitals, nursing homes, and other types of health facilities.

The Department of Health's Food and Consumer Safety Bureau and/or local, county, or district health officers or sanitarians have authority to inspect the operations of establishments serving food and beverages. These inspections cover food, personnel,

Chapter IV

Current Review Structure

food equipment and utensils, sanitary facilities and controls, construction, fixtures and housekeeping.

Advocacy Groups

There are various advocacy groups that have been formed to serve as "watchdogs" for various state and federal acts that have been implemented. For example, the Mental Disabilities Board of Visitors is charged by Montana law to review patient care at community mental health centers, as well as the institutions for the mentally ill and the developmentally disabled. The Mental Commitment and Treatment Act (Title 53, chapter 21, MCA) and the Developmental Disabilities Act (Title 53, chapter 20, MCA) provide guidelines and procedures for the Board. The Montana Advocacy Program also focuses on services to people with mental disabilities. The Department of Family Services' Aging Services Unit focuses on senior citizens and monitoring services covered by the federal Older American Act.

Professional and Occupational Licensing

In addition to regulation of facilities, there is regulation of health care practitioners through professional licensing boards and peer review associations. There are currently licensing boards for pharmacists, physicians, radiologic technologists, nurses, physical therapists, nursing home administrators, and occupational therapists. These boards can conduct peer reviews and complaint investigations of their related professions.

Accreditation Organizations

Another form of peer review is conducted by health accreditation organizations which can conduct surveys and inspections to ensure national health care standards are met. Health care facilities may voluntarily pay for an accreditation review to verify the quality of care offered at their facility. The primary health care accreditation organization utilized by facilities in Montana is the Joint Commission on Accreditation of Health Care Organizations (JCACHO). JCACHO is recognized by the state of Montana for ensuring the quality of health care operations in applicable facilities. There are currently sixteen hospitals certified by JCACHO in this state.

**To What Extent Does
the Licensure Bureau
Rely Upon Other
Agency Reviews?**

Currently the Licensure Bureau relies on the regulation conducted by some other state agencies. However, there has been no formal assurance this regulation meets the needs of the Licensure Bureau.

For example, some reviews are completed by Department of Corrections and Human Services staff from the Mental Health Division and the Chemical Dependency Division for applicable facilities. In the past, the Licensure Bureau did not always define the roles of these various agencies or take steps to ensure these reviews address state licensure requirements. New agreements with more specific guidelines are currently being developed.

Section 50-5-103, MCA, also allows the Licensure Bureau to rely on the surveys of health care facilities conducted by the Joint Commission on Accreditation of Health Care Organizations (JCACHO) accreditation association. This association primarily conducts reviews of hospitals. The bureau is relying on reviews conducted by this association.

As noted previously, the department separated the Certification and Licensing functions in May of 1992. The Licensure Bureau continues to rely on the Certification Bureau to regulate the majority of health care facilities even though there is no formal agreement outlining the licensing requirements which need to be met. The Certification Bureau has developed survey protocols for the various facilities it reviews to ensure all applicable federal standards are met. Federal protocols appear to be more extensive than most state standards for some facility types. Certification reviews generally address patient records, dietary services, medication services, resident rights assurance, staff qualifications and organization, physical plant and equipment maintenance, and quality of care assessments.

Although the bureau is relying on these other agencies in some areas, there have been no formal agreements which outline the requirements or standards that have to be met at those facilities. Based on our interviews with staff at these other agencies, there

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Current Review Structure

are several areas which may not be examined during the various reviews. For example, reviews of mental health facilities conducted by Department of Corrections and Human Services staff focus on their contract terms rather than specific licensing requirements.

Another area where the bureau is not fully coordinating with other agencies is building code reviews. Although Building Codes Bureau staff review all health care facility construction plans, the Licensure Bureau still conducts its own construction reviews for hospitals and nursing homes.

With the activities of these other agencies, there are only limited health care facility types which are mainly the responsibility of the Licensure Bureau. Personal care homes and adult day care homes are not inspected regularly by other agencies. Bureau inspection reviews have concentrated on these facilities in the past two years.

How do Other States License Health Care Facilities?

We contacted seven other states to review the level of health care facility licensing programs operated. We contacted three states from the same region as Montana, as well as four other states the department identified as having licensing issues similar to Montana. All seven of the contacted states require some form of annual state health care licensure for some facility types. Every state is licensing hospitals, nursing homes, and home health agencies. Requirements for other facility types varied extensively.

Federal oversight has grown extensively at the state level to ensure compliance with Medicaid and Medicare standards. Other states we contacted operate their state health facility licensure program in conjunction with their federal certification programs. In general, the federal program has become "the lead agency" in state health facility regulation.

One-Step Licensing

In 1982, the legislature studied the efficiency and consistency of the licensing system, including fire safety and health-sanitation reviews. Based on this study, the legislature passed one-step licensing laws. Section 50-8-102, MCA, requires a one-step licensing process for all facilities under the jurisdiction of Department of Health and Environmental Sciences, Department of Corrections and Human Services, and the Department of Family Services.

Our audit found limited formal efforts to address compliance with these statutes. Although there are one-step licensing requirements outlined in sections 50-8-101 through 50-8-105, MCA, there has been no one group or agency appointed as "in-charge" of licensing regulation.

**Should the Current
Review Structure
Continue as is?**

There are several areas where Montana health care facility standards need to be updated to reflect current health care industry operations. Administrative rules for some types of health care facilities have not kept pace with changes in procedures. Agency staff also noted that standards need to reflect or incorporate standards that have been established by the other regulatory agencies. For instance, DHES standards relating to mental health and chemical dependency facilities had not been updated and coordinated with standards that have been developed by the Department of Corrections and Human Services.

Another example relates to infectious waste management. Section 75-10-1006, MCA, states the department responsible for licensing health care facilities shall require each licensee to comply with the Infectious Waste Management Act. Most health facilities handle infectious wastes. For example, hospitals have blood samples and syringes which should be disposed of properly. We found the bureau has not developed standards for staff and facility operators to follow in this area.

Based on our audit findings, we conclude the state should have a health care facility licensure process that coordinates licensure

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Current Review Structure

functions between the various involved agencies. The process should also ensure facility compliance with state and federal standards to meet the program's mission of protecting the people of Montana. Due to extensive changes in how health care is provided and due to several state agencies sharing overall regulation, we believe the Governor should revisit the concept outlined in the one-step licensing statutes. The Governor could do this by designating a lead agency for health care facility regulation. Specific responsibilities need to be assigned to ensure all oversight and regulation of facilities is coordinated. Specific steps should be taken to address noted areas of noncompliance with licensing laws. The designated lead agency can take steps to identify areas which may require additional administrative rule development.

Recommendation #1

We recommend the Governor:

- A. Designate a lead agency for health care facility regulation,**
- B. Direct the lead agency to formally coordinate the regulatory efforts and assure compliance with licensing statutes, and**
- C. Direct the lead agency to identify and clarify all related health care rules related to facility standards.**

Chapter V

Licensure Bureau Administration

Introduction

Throughout the course of this audit, we identified areas where additional steps could be taken to strengthen the administration of the Licensure Bureau. Because the Licensure Bureau is an integral component of Montana's health care regulation, we believe improvements need to be made to assure program goals are achieved. This chapter outlines actions that could improve program administration.

Program Resources

During the audit, we examined the need for additional staff and resources in this program. With only five staff devoted to the overall licensing duties for all health care facilities, it appears staff and resources are limited. However, additional coordination with other agencies and programs could impact the staffing needs of this bureau. In addition, we noted some other issues which could impact staffing and resource needs. These issues are discussed in the following sections. By strengthening some of the management controls over this program, the bureau could improve their efficiency and impact the need for additional resources.

Areas Where Additional Information Would be Useful

The Licensure Bureau has been in operation, separate from Certification Bureau, since May 1992. The bureau has not yet developed a system to manage and monitor its activities, project resource needs, establish procedures, or evaluate its performance. The bureau does not have information on many of the important activities it conducts. Without this information, the bureau will not be able to project resources and budget needs for the future. For example, the bureau does not know:

- What percentage of time inspectors spend on administrative, inspection, or technical assistance activities.
- What type of deficiencies are noted by facility type or the percentage of facilities that have similar deficiencies.
- The length of time needed to perform an in-depth survey for an adult day care facility versus a personal care home.

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Licensure Bureau Administration

- The number of health care facilities that are inspected by other state agencies.

Program and Staffing Information

We believe the bureau should compile licensure statistics and inspection data to assist in evaluating program activities and ensuring provider compliance. For example, if the bureau should find out that 30 percent of an inspector's time is spent on administrative tasks, then bureau management may decide it needs an administrative assistant instead of another inspector. If inspectors spend 40 percent of their time with technical assistance, then the bureau may decide to provide formal seminars for health care providers. Staffing levels impact the ability of this program to maintain compliance with program requirements, but current staffing levels cannot be reviewed until further information is available and the current health facility regulation structure is defined as discussed in Chapter IV.

Accurate Information Needed

During our file review, we also noted outdated or incomplete information. During phone calls to health care facilities, we noted some health care facilities were no longer operating or had changed ownership. Steps should also be taken to ensure the bureau is collecting comprehensive and accurate facility data.

Recommendation #2

We recommend the department establish a system to:

- A. Identify program and staffing information needed to make management and policy decisions.**
- B. Accurately collect and update facility information.**

**Additional Guidelines
are Needed**

We found there are limited guidelines available for licensure staff. There are several areas where specific procedures would ensure consistency and assist staff decision-making. We noted there were no guidelines for: following up on inspection findings, issuing provisional licenses, or handling complaints relating to health care facilities.

An area where licensing policy should be developed is criteria for issuing one, two, or three year licenses. Currently the law states that the bureau may issue licenses for one to three years, but no formal guidelines have been developed to establish clear criteria on when a three year license would be more appropriate than a one year license. Staff interviews indicated that currently the decision is made based on historic inspection information and past licensing trends of the facility.

Specific guidelines would help personnel perform duties in a consistent and accurate manner. Staff interviews indicated some inconsistencies and questions relating to specific program operations. Established procedures strengthen management's control over program operations and help assure continuity of services as staffing changes occur.

Recommendation #3

We recommend the department develop formal policies and procedures for the Licensure Bureau.

Overall Bureau Priorities

In addition to the lack of formal policies and procedures for licensure areas, we also found the bureau has no clear policy for establishing day to day priorities. As noted in Chapter III, we documented several areas of noncompliance. All bureau goals have not been addressed or fully developed and; therefore, staff priorities are continually changing. Bureau staff often react to

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Licensure Bureau Administration

immediate demands, rather than focusing on current bureau goals. This has resulted in delays in rule development and delayed inspections. Without clear priorities and established guidelines, bureau activities will be less effective. The department should develop a plan which addresses bureau priorities and helps assure compliance with all licensure requirements.

Recommendation #4

We recommend the department develop a management plan to establish bureau priorities.

Licensing Fees

The legislature established a licensing fee system in 1947 when it established a health care facility licensure program. The original fee was established at \$10 per facility and increased once in 1967 to \$20 per facility. In 1975 the law was amended to require any facility planning to operate with more than 20 patient or resident beds pay an extra \$1 for each additional bed. Department staff indicated limited funding has impacted the ability of the program to enforce its statutory requirements. Limited funding can restrict the staff and resources to actively regulate health care facilities. Based on our review, we believe there are three funding options that can be considered for this program. These options include:

- establishing fees commensurate with program costs;
- establishing minimal licensure fees to cover processing costs;
- establishing fees related to program costs.

Fees Commensurate with Costs

Although section 50-5-202, MCA, outlines the general licensing fees for health care facilities, section 50-5-227 (2), MCA, allows the department to establish separate fees for licensing, inspecting, and patient screening at personal care homes. These statutes also state personal care home licensing fees must be reasonably related to service costs. Currently, the bureau charges the

standard \$20 licensing fee. Although the bureau has not compiled data on program costs relating to personal care facility regulation, we calculated costs based on current bureau activities. We estimated total survey costs for personal care homes would be a minimum of \$10,000 per year for all the currently licensed homes. Current fees only generate approximately \$600 per year. To be commensurate with costs, the fee should be at least \$350 per year per home.

However, if the bureau raises licensing fees for personal care homes to comply with the "reasonably related" provisions of state law, there will be inconsistencies in the current licensing fee structure. The personal care homes will be charged a higher rate to cover actual regulation costs, while other facilities pay a nominal fee. To make health care licensing fees commensurate with costs would require a substantial increase in current fees. For example, we noted in other states annual licensing fees were as high as \$2,500 for some facility types.

**Minimal Licensure Fees to
Cover Processing Costs**

As noted earlier, the health care facility licensing program was developed as a function of government to protect the safety and health of the public. As a result, this program has historically been funded with General Fund moneys. Although a minimal licensing fee is charged, these fees are deposited into the General Fund and do not provide direct program support. The current fees do not correlate to program costs. Current program operations are budgeted at approximately \$350,000 a year, but fees only generate \$15,000 in income. The current fee structure was never intended to cover all program costs and appears it is an administrative and handling fee rather than a fee providing funds for any type of program support. If the legislature intends for this program to be a general function of government, then an administrative and handling fee is appropriate. However, the fee should cover the cost of processing licenses. For fiscal year 1992-93, we estimate the administrative cost of processing licenses to be about \$36,000. To cover these costs the average fee would need to be approximately \$110 per facility.

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Licensure Bureau Administration

Fees Related to Costs

Another option would be to establish fees at a certain percentage of program costs. For example, fees could be raised to a level which provides 50 percent of program costs and General Fund moneys could provide the other 50 percent. Fees could also be graduated depending on facility type. For example, bureau staff time to review hospitals may be higher than staff time to review an adult day care center. Fees could be related to the actual bureau costs associated with specific facilities.

Under this option fees would not be the sole source of funding. Fees could be used to supplement the current level of funding and resources available for this program. This would create a program supported by both the general public and the health care industry.

Conclusion

In comparing this program with other licensing programs, we found some areas of regulation are self-supporting. For example, Building Code fees and occupational and professional licensing fees are set at a level to cover program costs. On the other hand, other services such as Food and Consumer Safety at DHES are funded through General Fund moneys, yet receive a portion of a license fee of \$60 per food establishment. (section 50-50-205, MCA).

The current health care facility licensing fee structure has not been altered since 1975 and the base fee of \$20 has not been changed since 1967. The value of \$1.00 in 1967 is equal to a little less than 24 cents in 1992. Just to maintain the "purchasing power" of the license fee, the fee should be approximately \$84.

We believe the department should seek legislation to make all fees consistent and commensurate with program costs, or set all health care facility licensing fees to cover processing costs, or establish fees at a certain percentage of program costs.

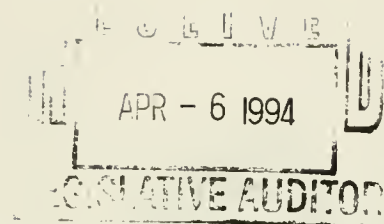
Recommendation #5

We recommend the department seek legislation to:

- A. Establish fees that are consistent and commensurate with program costs; or,**
- B. Set licensure fees to cover processing costs; or**
- C. Establish fees at a certain percentage of program costs.**

Agency Response

OFFICE OF THE GOVERNOR
STATE OF MONTANA




MARC RACICOT
GOVERNOR



STATE CAPITOL
HELENA, MONTANA 59620-0801

MEMORANDUM

TO: SCOTT A. SEACAT, LEGISLATIVE AUDITOR

FROM: GOVERNOR MARC RACICOT 

DATE: APRIL 6, 1994

RE: PERFORMANCE AUDIT RESPONSE, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SERVICES, HEALTH FACILITY LICENSURE PROGRAM

The Governor's Office and the Department of Health and Environmental Sciences (DHES) concur with recommendation number 1 of the Performance Audit of the DHES Health Facility Licensure Program, dated March 1994.

The Governor designates the Department of Health and Environmental Sciences as lead agency for health care facility regulation, and directs DHES, during fiscal year 1995, to formally coordinate the regulatory efforts and assure compliance with licensing statutes. DHES is also directed, during fiscal year 1995, to identify and clarify all related health care rules related to facility standards.

The Department of Health is also directed to bring this audit recommendation to the attention of the Governor's Task Force to Renew Montana Government.

cc: Dept. of Health and Environmental Sciences
Dept. of Corrections and Human Services, Chemical Dependency Division
Dept. of Justice, Fire Prevention and Investigation Bureau
Dept. of Commerce, Building Codes Bureau
Mental Disabilities Board of Visitors
Montana Advocacy Program
Dept. of Family Services, Aging Services Unit

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
DIRECTOR'S OFFICE

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STATE OF MONTANA


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HELENA, MONTANA 59620-0901

April 7, 1994

MEMORANDUM

TO: SCOTT A. SEACAT, LEGISLATIVE AUDITOR

FROM: BOB ROBINSON, DIRECTOR 
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

RE: PERFORMANCE AUDIT OF THE HEALTH FACILITY LICENSURE PROGRAM,
THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

The Department has reviewed the Health Facility Licensure performance audit and in general agree with the recommendations of the audit. We would also like to recognize the work done by the audit team and their endeavor to analyze and accurately portray the performance of a highly complex program.

As noted in the audit report, the Health Facilities Division was created in May 1992 to effect management, financial and performance improvements. The primary goals of the reorganization were: 1. to shorten the lines of authority and enhance direct access to the Department Director, 2. to insure the proper expenditure of both Federal funds on Federal programs and General Fund to State Licensure and 3. to dedicate general fund dollars for the oversight of health care facilities that are the responsibility of the State.

As a result, the managerial practices and the performance of the division have been continuing to improve. As the following responses indicate, we believe the implementation of the performance audit recommendations will continue our process of program improvement.

Recommendation #2

- A. Identify program and staffing information needed to make management and policy decisions.
- B. Accurately collect and update facility information.

Response: Concur

- A. The Department will enhance the current information system and the completed system will be designed to gather data that will identify program needs, staffing levels and will help guide management and policy decisions.

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B. The Certification Bureau currently operates several facility data systems. We have reviewed these systems and intend to use the best parts of the certification systems to design a facility information system that will meet the needs of the Licensure Bureau.

Implementation of items A and B will be completed by June 30, 1995.

Recommendation #3

The Department develop formal policies and procedures for the Licensure Bureau.

Response: Concur

Since the reorganization of the Bureau in May of 1992, the Bureau staff have been drafting policies and procedures. A large segment of the initial work had been completed at the time of the audit. The Bureau will continue the development of the draft policy and procedure manual. The final manual will replace the present interim policies.

Implementation of recommendation #3 will be completed by December 31, 1994.

Recommendation #4

The Department develop a management plan to establish priorities.

Response: Generally Concur

The Department believes that it has only limited authority to set priorities, and believes it is required by law to follow the Statutory requirements as determined by the legislature.

The Department will continue to develop management strategies to meet the legislative mandates and will also continue to request from the legislature adequate funding to meet the current and new law, as well as submit legislative proposals that identify alternatives to additional funding.

Recommendation #5

The Department seek legislation to:

- A. Establish fees that are consistent and commensurate with program cost; or
- B. Set licensure fees to cover processing costs; or
- C. Establish fees at a certain percentage of program costs.

Response: Generally Concur

The Department agrees that recommendations A and C may be alternatives that would provide adequate funding to support the Bureaus' need for additional resources. The Department believes, however, that such legislation is an important public policy consideration relative to who should bear the cost of protecting public welfare. Such legislation is properly generated by the legislative audit committee or by the appropriation sub-committee. The Department would offer technical support needed for such legislation.

B. The current licensure fee is sufficient to cover the cost of processing the facility license.

